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Supreme Court, U.S.

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No.

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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

HOWARD M. PORTER, ET AL.,

Petitioners,

v.

MAYOR AND CITY COUNCIL, ET AL.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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July 13, 1990

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SUPREME COURT, U.S.

COUNTER-STATEMENT OF QUESTIONS

1. Whether the doctrine of legislative immunity shields the governmental entity itself when testimony of the legislator on legislative activity is necessary to defend the suit.

2. Whether, under the functional analysis of legislative immunity, members of the Executive Branch of government are entitled to legislative immunity "when engaged in a legislative function - budget making process.

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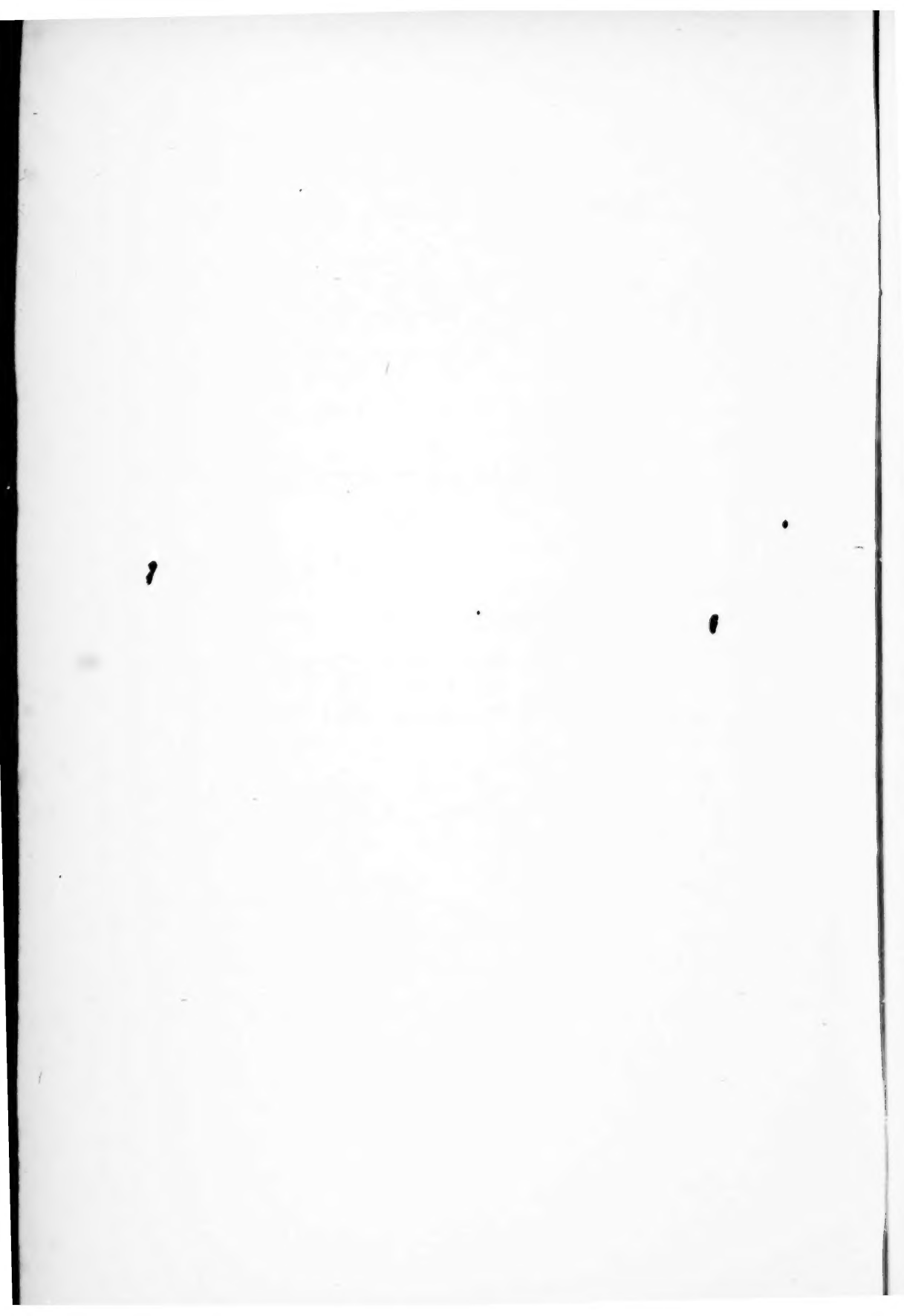
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

MABEL BAKER AND HOWARD PORTER,

Petitioners,

v.

MAYOR AND CITY COUNCIL, et al.,

Respondents.

**RESPONDENT'S BRIEF IN OPPOSITION
TO A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

COUNTER-STATEMENT OF THE CASE

During the budget deliberations for fiscal year (FY) 1985¹, approximately three hundred positions were eliminated due to a reduction in funds. Two of these positions were occupied by

¹The City of Baltimore's fiscal year runs from July 1st to June 30th. e.g. Fiscal Year 1985 began July 1, 1984 and ended June 30, 1985.

Petitioners, Baker and Porter, consequently, Petitioners were laid-off at the end of Fiscal Year 1984.

The City of Baltimore (hereinafter referred to as "the City") has a strong executive budget process governed by its Charter. (Resp. App. at 5a). At the heart of this process is the Board of Estimates (hereinafter referred to as "the Board") which is composed of the Mayor (elected official), the President of the City Council (elected official), the Comptroller (elected official), the City Solicitor, and the Director of Public Works. It is this body's responsibility to formulate, determine, and execute the fiscal policy of the City. Mayor and City Council of Baltimore v. Am. Fed. of States, 281 Md. 463 (1977). However, the budget preparation does not begin with the Board of Estimates but actually begins with the bureau heads² making recommendations to the Director of Finance

²Heads of municipal agencies are called Bureau Heads.

pursuant to the Baltimore City Charter Article IV Sec. 2 (d)(1) (Resp. App. at 7a) (hereinafter referred to as "the Charter").

The Charter requires that first the bureau heads make recommendations to the Director of Finance who, in turn, prepares a preliminary operations budget for submission to the Board of Estimates. It is the Board which finally determines the maximum appropriations -- it may either increase or decrease funding as it deems necessary. Mayor and City Council of Baltimore v. Am. Fed. of States, 281 Md. 463 (1977).³ The

³"...The Board is responsible for formulating, determining, and executing the fiscal policy of the City..." Art. VI, Sec. 2(a). Accordingly, it is required to submit to the City Council for each fiscal year a proposed Ordinance of Estimates, Art. VI, Sec. 2(b). The proposed ordinance must contain "{e}stimates of appropriations needed for the operations of each municipal agency," estimates for appropriations for other purposes, and a separate listing of appropriations needed for capital improvements, Art. VI Secs. 2(c)(1),(2). Accompanying the proposed Ordinance of Estimates must be "{a} breakdown of the amounts stated for each...purpose...of each municipal agency," including information concerning "the compensation of every officer and salaried employee of the city," Art. VI, Sec. 2(f)(1). The Board also must submit comparisons between the appropriations actually contained in the

Board prepares the Ordinance of Estimates, the City budget bill; along with a statement of the breakdown of the amounts stated for each officer and salaried positions. While the Ordinance succinctly states what the total appropriation for a department is, it is the required accompanying statement which details the specific appropriations for each program as well as the salaried positions. When the City Council passes the budget, it passes the Ordinance, which is accompanied by a statement.

Petitioners were employed in the Real Estate Department, which is one of the departments in the office of the Comptroller (an elected official who also sits on the Board of

requested by the agency, as well as the amounts appropriated for the current fiscal year compared to the amounts expended in the prior year, Art. VI, Sec. 2(f)(2). Detailed information as to the source of funding for the appropriations must be submitted, Art. VI, Sec. 2(f)(3). And the Mayor must send to the Council a message "explaining the major emphasis and objectives of the City's budget for the next ensuing fiscal year." Art. VI, Sec. 2(f)(6)...." Mayor and City Council of Baltimore v. Am. Fed. of States, 281 Md. 463, 469 (1977).

Estimates), as mid-level managers. In accordance with a mayoral directive to reduce budgets by 5% in order to match the diminishing resources with the cost of maintaining services, it was recommended to the Director of Finance that the Petitioners' positions be eliminated. However, in preparing the preliminary operating budget for the Board, the Director of Finance recommended only the elimination of Petitioner Porter's position; Petitioner Baker's position was eliminated by the Board of Estimates. Both Petitioners' positions were eliminated during the budget-making process for fiscal year 1985 in that the Board's Budget Ordinance did not include their positions. Consequently, Petitioners were laid-off, not terminated.

OPINION BELOW

In affirming the district court's decision that legislative immunity insulated the City from ADEA liability, the Fourth Circuit correctly found that the role of the Board of Estimates in the City's budget making process

was properly characterized as legislative under Forrester v. White, 448 U.S. 219 (1988). Therefore, the doctrine of legislative immunity has full force.

Pursuant to the Charter, the City's budget process begins with bureau heads making recommendations to the Director of Finance who, in turn, prepares a preliminary budget for submission to the Board of Estimates for their consideration. In this instance, the bureau head had recommended the elimination of two positions and a newly created position. The Director of Finance only accepted part of this recommendation - the elimination of one position and the creation of a new one. It was the Board of Estimates' decision to eliminate both Petitioners' positions. The Board is the entity through which positions may be eliminated or created; the Director of Finance's recommendations as well as the bureau heads' recommendations are not binding on the Board. Consequently, the Fourth Circuit held that recommendations of low level personnel were

insufficient to establish ADEA liability when in fact it was the Board which possessed the real authority. Therefore, the Court's inquiry as to whether legislative immunity was applicable focused upon the Board and its members.

The Fourth Circuit found that the primary purpose of legislative immunity was not implicated, that is, to protect individual legislators from liability, but that the secondary purpose -- to prevent legislators from having to testify regarding matters of legislative conduct -- was clearly applicable. The Court below reasoned that since the Board had the real authority in the budget process, the motivation of its members would be crucial to the City's defense. If the Plaintiffs succeeded at establishing a prima facie case that age was a determining factor in the Board's decision, the Fourth Circuit could not conceive a viable defense which would not include testimony from the Board's members -- "...this eventuality triggers the immunity protection..." Baker and Porter v. Mayor and City Council, 894

F.2d 679, 682 (1989). This is the secondary purpose of the doctrine of legislative immunity.

REASONS FOR DENYING THE WRIT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS WAS MADE IN CONFORMITY WITH DECISIONS OF THE SUPREME COURT IN THAT WHEN A LEGISLATOR'S TESTIMONY OF LEGISLATIVE ACTIVITY IS NECESSARY TO DEFEND THE SUIT, LEGISLATIVE IMMUNITY HAS FULL FORCE AND PROTECTS THE LEGISLATOR AND THE GOVERNMENTAL ENTITY ITSELF.

Petitioners argue that the Fourth Circuit erred when it extended the immunity of individual legislators to the governmental entity itself -- the City of Baltimore. Admittedly, legislative immunity is a common-law immunity applicable to legislators acting in a legislative capacity rather than an administrative capacity. Bruce v. Riddle, 637 F.2d 272, 279 (4th Cir. 1980). However, the Fourth Circuit did not extend the immunity but rather applied it appropriately.

The doctrine of legislative immunity, "having its roots as it does in the Speech or Debate Clause of the Constitution", Kilburn v. Thompson, 103 U.S. 168, 204 (1881) has several equally important purposes. As enunciated by this Court, the immunity protects the legislators engaged in the sphere of legitimate activity not only from the consequences of litigation's results but from the burden of defending themselves. Tenny v. Brandhove, 341 U.S. 367, 376 (1951). Subsequent to Tenny, this Court additionally held that the purpose of the doctrine is to prevent legislators from having to testify regarding matters of legislative conduct, regardless of whether they were testifying to defend themselves. Gravel v. U.S., 408 U.S. 606, 616, (1972) (a suit which required the testimony of a legislator's aide regarding legislative activity.) It was this latter purpose of the doctrine on which the Fourth Circuit relied. The City could not defend itself without the testimony of the members of Board of Estimates -- this triggers

the immunity. The Gravel court stated that this immunity prohibits activity which "impinges or threatens the legislative process." Gravel, 408 U.S. at 616.

If the suit is not barred by this immunity, petitioners would be allowed to probe the process by which the Board of Estimates chose to include or exclude certain elements of the budget. This impinges on and impermissibly invades the process by which legislative decisions are made.

Petitioners claim that no other circuit has decided this precise issue, but the province of the City to eliminate positions through the budget process is well established. See 63rd Am. Jur. 2d "Public Officers and Employees." Sec. 31 (1984); Goldsmith v. Mayor and City Council of Baltimore, 837 F.2d 158, 161 (4th Cir. 1988). The City has the unfettered authority to abolish, create or alter any position. Id. at 162.

Moreover, this Court has held on at least one occasion that the governmental entity on which the legislative actor serves (the actor could be a member of either the Judiciary or the Executive branch, but within the meaning of Forrester v. White, 484 U.S. 219 (1988), legislative actor herein refers to the function rather than the assigned position) is also immune from suit. Supreme Court of Virginia, et al. v. Consumer Union of the United States, 446 U.S. 719 (1980). Furthermore, this Court has held that legislative immunity protects legislators and their aides from being questioned in matters relating to the legislative process regardless of whether the legislator is testifying to defend himself or not. Gravel v. United States, 408 U.S. 606, 616 (1972). In other words, if a legislator must testify regarding legislative matters, the immunity has full force.

In Gravel, it was not the legislator but rather the legislator's aide who was subpoenaed to testify regarding legislative matters. This

Court held that the Senator and his aide are to be treated as one and that this immunity prohibited inquiry into legislative acts. Similarly, the case herein will require testimony regarding legislative activity - budget making process. Consequently, legislative immunity is applicable.

Clearly, this immunity protects the individual legislator from having to testify on legislative acts, but more importantly, the underpinning of the immunity stems not from the actor, but rather stems from substantive matters at issue. In Gravel, it was with regard to matters before a Senate subcommittee; in the case herein, it is with regard to the City's Budget Process - clearly a legislative act. Therefore, it does not matter who is testifying but rather to what is being testified.

Petitioners argue that the Fourth Circuit extended the doctrine of legislative immunity to the City. However, the Fourth Circuit did not

extend the doctrine, but rather correctly applied the doctrine as held by this Court in Gravel, supra.

In Consumer Union, a consumer organization brought suit against the Virginia Supreme Court and its Justice. This Court held that in promulgating the Virginia Code of Professional Responsibility, the Virginia Supreme Court acted in a legislative capacity and that the Court as well as its members were immune from suit under the doctrine of legislative immunity. Id. at 734.

The doctrine of legislative immunity is to allow legislators to perform independently without fear of outside interference. Petitioners contend that the immunity is individual and does not protect the legal entity on which the legislator serves and cites as authority Rateree v. Rockett, 852 F.2d 946, 951 (7th Cir. 1988); Minton v. St. Bernard Parish Bd., 803 F.2d 129, 133 (5th Cir. 1986) and Kingsville Independent School District v.

Cooper, 611 F.2d 1109 (5th Cir. 1980). However, all three of these cases are readily distinguishable from the case herein.

In Rateree, supra, the Seventh Circuit granted legislative immunity for the individual legislators, but the question of whether legislative immunity was applicable to the City was not the issue on appeal. The court below did not grant the City of Harvey immunity under 42 U.S.C. 1983; moreover, plaintiffs did not succeed at trial, but rather plaintiffs accepted a settlement offer prior to trial under Rule 68, Federal Rules of Civil Procedure. Rockett v. Rateree, 668 F. Supp. 1155 (1987).

Under 42 U.S.C. 1983, Plaintiffs in Rateree would not have to prove motivation in order to prevail, but only would have to prove that the alleged constitutional violation was pursuant to a "custom or policy" of the City in order to prove liability. Monell v. Department of Social Services, 436 U.S. 658 (1978). To prove a municipal custom or policy, testimony of legislators is not a relevant inquiry. However,

in the case herein, to prove motivation for the elimination of the position was because of Petitioners' age, the City simply could not defend itself without the testimony from the members of the Board. Therefore, Rateree is dissimilar from the case herein and not in conflict with the Fourth Circuit.

In Minton v. St. Bernard Parish Board, 803 F.2d 129 (5th Cir. 1980), a Mississippi resident brought an action against the school board and its members. The question of whether legislative immunity applies to the school board or its members was again not the issue on appeal. Plaintiffs in Minton did not state in their complaint whether they were suing the board members in their official capacity or their individual capacity; consequently, the Fifth Circuit actually never held whether legislative immunity was applicable. Minton at 134. The court merely stated in dicta that legislative immunity applies to the individual legislator and not the body on which the legislator serves. However, the trial court

never decided the issue of legislative immunity as in the case herein. Consequently, the Fifth Circuit remanded the case for further review. Therefore, Minton, simply, is not in conflict with the Fourth Circuit.

Petitioners again have relied upon a case which is wholly irrelevant to the question of legislative immunity. In Kingsville Independent School District v. Janet Cooper, supra, plaintiff, an untenured high school teacher, sued for injunctive relief for an alleged constitutional violation. (Kingsville like Rateree was a 1983 action.) Kingsville did not involve legislative immunity but does involve a qualified immunity under 42 U.S.C. 1983; on the other hand, the case herein involves totally legislative immunity not qualified immunity. Therefore, this case obviously is not related and not in conflict with the Fourth Circuit.

The question of immunity for the City does not in this—instance turn on whether the legislator's testimony is in defense of himself/herself individually, but rather turns

on whether the legislator's testimony with regard to legislative action is necessary to properly defend the case. Petitioners contend that because no other circuit has extended immunity to the governmental entity, the Fourth Circuit has erred in its application to the case herein. While it appears no other circuit has applied legislative immunity to the governmental entity, the Supreme Court has extended it to the judicial branch of government acting in a legislative capacity. Supreme Court of Virginia, supra.

It is Petitioners' position that such application of legislative immunity will subvert the purpose of ADEA. The Petitioners have cited several cases in the district courts of the Fourth Circuit which have held that the claims were barred by the doctrine of legislative immunity because the State could not defend the action without the testimony of the legislators. Drayton v. Mayor and Council of Rockville, 699 F. Supp. 1155 (D.Md. 1989, aff'd. mem. on other grounds, 88 F.2d 864 (4th Cir. 1989); Nuchims v.

West Virginia, 724 F. Supp. 1219 (D. W.Va. 1989), appeal pending, No. 89-2487 (4th Cir.). This doctrine does bar a judicial review of legislative decisions which eliminate positions; however, the holding of this Court that a court may not inquire into the "motives of legislators, has remained unquestioned." (emphasis added). Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 405 (1979). To hold otherwise would clearly impinge upon the legislative process, and to allow this claim would be tantamount to judicial second-guessing of the budget making process.

II. THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE FEDERAL COURT OF APPEALS FOR THE FOURTH CIRCUIT MERELY AFFIRMED THE "FUNCTIONAL ANALYSIS TEST" IN DETERMINING THAT THE BUDGET MAKING PROCESS IS LEGISLATIVE.

Petitioners contend that the motivation of the City Council members is not at issue but rather the motivation of the Board and members of the Comptroller's staff. It is unquestioned that the recommendations from members of the

Executive Branch are not controlling, for the real authority and power in the City's budget process rest with the Board. Mayor and City Council of Baltimore v. Am. Fed. of States, 281 Md. 463 (1977).

The Fourth Circuit applied the functional test as outlined in Forrester v. White, 484 U.S. 219 (1988) in determining whether the Board was acting legislatively or administratively. While the board is comprised of members from both the legislative and executive branches of government, it acts in a legislative capacity when deliberating on the budget.

The budget making process is a quintessential legislative function. In the instant action, over three hundred positions were eliminated. Baker at 681. Petitioners were not terminated but were laid off because their positions no longer existed.

Petitioners argue though that the decision to hire or fire personnel is an administrative one not deserving of immunity and cites as authority many cases involving the termination

of employees. Respondent City does not take issue with Petitioners' position. Petitioners were not terminated and several courts have held that when positions were eliminated though these actions were legislative and deserving of absolute immunity. Skrocki v. Caltabino, 568 F. Supp. 703, 706 (E.D. Pa. 1983); Goldberg v. Village of Spring Valley, 538 F. Supp. 646 (S.D. N.Y. 1982); Wells v. Hutchinson, 499 F. Supp. 174, 185 (E. D. Tex. 1980).

The problem with Petitioners' analysis is their inability to distinguish between a termination when employee is fired but the position remains and a lay-off where the position is eliminated. If Petitioners had been terminated, there would be no question regarding the inapplicability of immunity - it simply would not be available to the City. However, the facts herein are quite different.

The City cannot eliminate a position without legislative action. Goldsmith v. Mayor and City Council of Baltimore, 837 F. 2d 158, 161, and this power to abolish or create

positions is an unfettered authority of the City deserving of absolute immunity. Goldsmith, *supra*.

Applying Petitioners' reasoning, the City argues that when job titles are eliminated without reference to particular individuals, legislative immunity is applicable. Skrocki, *supra*; Goldberg, *supra*; Wells, *supra*.

Petitioners assert that the decision to eliminate their positions specifically is arguably a managerial decision. Impliedly, Petitioners argue that "but for" the recommendation to eliminate these particular positions, Petitioners would not have been laid-off. The answer to this question is purely speculative without the testimony of the legislators. Notwithstanding this, uncontroverted evidence has been presented below that shows that the Director of Finance did not accept the bureau heads' recommendations in total. Baker at 680, 681. The question still remains why the Board of Estimates chose to eliminate both positions. Whether age was or was

not a motivating factor lies within the minds of the members of the Board of Estimates which this Court has held is shielded under the doctrine of legislative immunity.

Petitioners contend that this suit should not be barred under the doctrine of legislative immunity; otherwise, all suits challenging ordinances would similarly be barred, and this would undermine the purpose and intent of the civil rights laws. This argument is flawed in that while all ordinances involve legislative activity, all ordinances do not involve the City's budget. If the suit is not barred, the City would be subject to answer to each and every budgetary decision it makes. This would truly undermine the legislative process, and is tantamount to judicial second-guessing of the City's budgetary process - a quintessential legislative function.

Moreover, to allow the judiciary to delve into the motives of the Board members, which has the actual power in developing the City's

budget, would bring the legislative branch of government in conflict with the judicial branch of government. Buckley v. Valeo, 442 U.S. 122 (1976). It is a well established doctrine that legislative actions are not to be questioned by the judiciary. Lake Country Estates, *supra*.

Petitioners further argue that if this Court does not grant review, victims of alleged discrimination would have no alternative avenue for relief. Clearly, the case herein is distinguishable from most ADEA suits which involve administrative decisions and not legislation actions. Budgetary restraints in austere times are a necessity and a government must carefully tighten its belt while at the time same, meet the needs of its constituency. It is the constituency which provides the ballot box check, not the judiciary. Rateree. Therefore, this case is clearly barred under the doctrine of legislative immunity.

Conclusion

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Charter of Baltimore City
1964 Revision

ARTICLE V

Comptroller

1. Comptroller - Election.

The voters of Baltimore City shall elect on the Tuesday next after the first Monday in November, 1967, and on the same day and month in every fourth year thereafter, a person to be Comptroller of the City, possessing the same qualifications as prescribed in the Charter for the Mayor. The term of the Comptroller shall commence on the Tuesday next after the first Monday in December succeeding his election and continue for four years and until his successor shall have been elected and qualified. The Comptroller shall be paid an annual salary of \$17,500¹ and shall appoint, to aid him in the discharge of his duties, a Deputy Comptroller and such assistants and employees as may be provided for in the Ordinance of Estimates. In case of temporary absence or disqualification of the Comptroller, the Deputy Comptroller shall, during such absence or disqualification from any cause, perform the duties of the Comptroller, including his duties as a member of the Board of Estimates.

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¹Increased to \$22,500 by Ord. 1121, approved June 30, 1971; to \$32,500 by Ord. 970, approved July 9, 1975; to \$39,500 by Ord. 1115, approved June 27, 1979; and to \$45,000 by Ord. 1057, approved Nov. 18, 1983.

2. Comptroller - Removal.

The City Council by majority vote of its members may remove the Comptroller from office for incompetency, wilful neglect of duty or misdemeanor in office, upon charges preferred by the Mayor, and after notice of such charges is given to the Comptroller, and an opportunity afforded him to be heard by the City Council. In the event of the death, resignation or removal from office of the Comptroller, his successor, to fill out his unexpired term, shall be elected by the City Council by a majority vote of its members.

3. Comptroller - Duties.

In addition to his duties as a member of the Board of Estimates, and of the Commissioners of Finance¹, the Comptroller shall have such general supervision of the Department of Audits and the activities of the City Auditor as may be provided for in this Charter and shall be responsible for the proper conduct, management and operation of the Department of Real Estate.

Subject to the approval of the Board of Estimates, the Comptroller shall, within the limits of the appropriation therefor in the Ordinance of Estimates, obtain such insurance as may be necessary for the proper protection of the City or as may be required by applicable law. The Comptroller shall, whenever he finds that it would be to the City's

¹Designation changed to "Board of Finance" by Res. No. 13, 1978, ratified Nov. 7, 1978.

advantage, seek competitive bids for such insurance. He shall perform such other duties as may be prescribed by ordinance not inconsistent with the Charter.

4. Department of Real Estate - Organization.

There shall be a Department of Real Estate, the head of which shall be the Comptroller. For the conduct of the Department, the Comptroller shall appoint a Real Estate Office and such assistants and employees as may be provided for in the Ordinance of Estimates.

5. Department of Real Estate - Duties.

The Department of Real Estate shall have the following responsibilities in all matters relating to the acquisition, sale, lease, exchange or other disposition of real property of the City; provided, however, that nothing in this section shall affect the exercise by the City by ordinance of the powers granted to it in subsection (15) of Article II:

(a) Subject to any limitation on this power elsewhere in the Charter, any purchase (other than by condemnation) of real property or an interest therein by the City shall (unless and to the extent otherwise provided by the Board of Estimates) be negotiated and made on its behalf by the Department of Real Estate in such a manner as the Board of Estimates shall from time to time authorize and instruct.

(b) The Department shall (unless and to the extent otherwise provided by the Board of Estimates) arrange for the disposition of any

building or parcel of land (or any other real property) no longer needed by the City for public use. Any such disposition shall be authorized by ordinance, shall be approved by the Board of Estimates with the approval entered in its minutes, and shall be made at public sale unless a private sale or other manner of disposition shall be expressly authorized by the Board of Estimates and entered in its minutes. The instrument of conveyance of any building or parcel of land (or any other real property) whose disposition has been so authorized and approved shall be executed on behalf of the City by the Comptroller or Deputy Comptroller and attested to by the Treasurer¹ or the Deputy Treasurer.

(c) The Department is authorized to lease any building or parcel of land (or any other real property) not needed by the City for public purposes on a month to month basis, unless otherwise provided by ordinance. It is also authorized to lease such property for fixed terms provided such leases are first approved by the Board of Estimates.

¹The Department of the Treasurer was eliminated by Resolution No. 13, ratified Nov. 7, 1978, and its functions transferred to the Department of Finance.

Charter of Baltimore City
1964 Revision

ARTICLE IV

Board of Estimates

1. Board of Estimates - Organization.

There shall be a Board of Estimates composed of the Mayor, President of the City Council, Comptroller, City Solicitor, and Director of Public Works, none of whom shall receive any additional salary as members of said Board. The President of the City Council shall be President of the Board, and one of the members shall act as Secretary. The Board may employ such clerks and assistants as may be necessary to discharge its duties; their number and compensation shall be fixed in the Ordinance of Estimates. The first meeting of the Board in every year shall be called by notice from the Mayor or President of the City Council personally served upon members of the Board. Subsequent meetings shall be called as the Board may direct.

2. Board of Estimates - Budget.

(a) The Board of Estimates shall be responsible for formulating, determining, and executing the fiscal policy of the City to the extent and in the manner provided for in this section and elsewhere in the Charter.

(b) The fiscal, budget, and accounting year of the City shall begin on the first day of July and end on the thirtieth day of June in every year

unless otherwise provided by ordinance or law. The Board of Estimates shall submit to the City Council the proposed Ordinance of Estimates for the next ensuing fiscal year at least sixty days before the beginning of said fiscal year. Said proposed Ordinance of Estimates shall have received an affirmative vote of a majority of all the members of the Board of Estimates. The Board shall deliver the proposed Ordinance of Estimates to the President of the City Council who shall promptly cause it to be introduced in the City Council. The Board shall also publish promptly a copy of said proposed Ordinance, certified by the signatures of a majority of its members, in two daily newspapers in Baltimore City.

(c) The proposed Ordinance of Estimates shall consist of:

(1) Estimates of the appropriations needed for the operations of each municipal agency for the next ensuing fiscal year and estimates of all other appropriations needed for the next ensuing fiscal year other than for capital improvements. Said estimates shall make up the operating budget portion of the proposed Ordinance of Estimates. These estimates shall be stated in terms of the amounts needed by each municipal agency for each particular program, purpose, activity, or project and the source of funds if other than general funds for said programs, purposes, activities, or project; provided, however, that the estimates of the Board of School Commissioners shall, unless said Board otherwise provides with the approval of the Board of Estimates, be presented in such form as is prescribed by Section 39 of Article VII; and provided further, however, that

the estimates for the Fire Department shall include such amounts if any, as may be determined by a final decision of a Board of Arbitration convened to arbitrate unresolved negotiations between the City and the certified employee organizations representing the fire fighters and fire officers, as prescribed by Section 46A of Article VII.

(2) Estimates of the amounts to be appropriated for capital improvements to each municipal agency in the next ensuing fiscal year and the source of funds for said capital improvements. Said estimates shall make up the capital budget portion of the proposed Ordinance of Estimates.

(d) To assist the Board of Estimates in the preparation of the annual proposed Ordinance of Estimates:

(1) The Director of Finance, under procedures and schedules established by the Board, shall prepare the preliminary operating budget for the consideration of the Board of Estimates. The preliminary operating budget shall include the estimates submitted by the municipal agencies for the next ensuing fiscal year, the recommendations of the Director of Finance thereon, all other estimates for appropriations to be made in the next ensuing fiscal year other than for capital improvements, and such other material as the Board of Estimates may prescribe. All municipal agencies shall, under procedure established by the Board of Estimates, cooperate with the Director of Finance in the preparation of said preliminary operating budget....

(e) Before the proposed Ordinance of Estimates is submitted to the City Council, the Board of Estimates shall hold public hearings. Prior to such hearings the Board shall make public the estimates of the appropriations needed for operations which have been submitted by the municipal agencies and any other estimates for appropriations other than for capital improvements for the next ensuing fiscal year. At such hearings the members of the City Council, heads of municipal agencies, and citizens shall have the opportunity to appear before the Board to speak for or against the inclusion of any particular appropriation in the proposed Ordinance of Estimates which is to be submitted by the Board of the City Council.

(f) The proposed Ordinance of Estimates submitted to the City Council by the Board of Estimates shall be accompanied by the following material; provided, however, that detailed information concerning the estimates of the Board of School Commissioners shall, unless said Board otherwise provides with the approval of the Board of Estimates, be presented in such form as is prescribed by Section 59 of Article VII:

(1) a breakdown of the amounts stated for each program, purpose, activity, or project of each municipal agency in the operating budget portion of the proposed Ordinance of Estimates into the amounts, stated in terms of standard classifications of objects of expenditure, for (a) personal services (b) materials, supplies, and equipment (c) debt service and (d) such other classes as the Board of Estimates may deem advisable. Such information with respect to personal services shall

include the compensation of every officer and salaried employee of the City; provided, however, that the salaries for employees in the same classification with a uniform salary or salary range may be combined into a single entry which shall indicate the number of such employees, the aggregate salaries, and the name or title of the classification.

(2) A comparison of the appropriations contained in the proposed Ordinance of Estimates with (a) the amounts requested by the municipal agencies in their budget submissions (b) the amounts appropriated for the current fiscal year and (c) the amounts expended in the prior fiscal year;

(3) detailed information as to the sources of funds to meet the aggregate total of the appropriations contained in the proposed Ordinance of Estimates;

(4) the long-range capital improvement program adopted by the Board and for each capital project included in the capital budget portion of the proposed Ordinance of Estimates the following: a brief description and location, the total estimated cost, the appropriations authorized to date, the appropriations proposed for the next ensuing fiscal year, the appropriations required thereafter to complete the project, and the estimated additional annual maintenance and operation cost. All such information may be stated in terms of concurrence with or departure from the recommended capital budget and the recommended long-range capital improvement program of the Planning Commission.